

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH**

...

**Original Application No. 290/00071/2019  
With Misc. Application No. 290/00071/2019**

Reserved on : 17.09.2019  
Pronounced on : 23.09.2019

**CORAM:**

**HON'BLE MRS. HINA P.SHAH, MEMBER (J)**

Sunny s/o Shri Kishan Lal Ji, Caste Harijan, aged 50 years, R/o Kabir Nagar, Soor Sagar Road, Bhairva Bhakhar, Jodhpur, Rajasthan [Hall: Part-Time Safaiwala at Sub Post Master Shastrinagar, Jodhpur]

...Applicant

(By Advocate: Shri S.P.Sharma)

Versus

1. The Union of India Through The Secretary, Ministry of Communication & IT, Department of Posts, Government of India, Sanchar Bhawan, New Delhi.
2. The Post Master General, Rajasthan Circle, Jaipur, Rajasthan.
3. The Post Master General, Rajasthan Western Region, Jodhpur- 342001.
4. The Senior Superintendent of Post Offices, Jodhpur Division, Jodhpur-342001.
5. The Sub Post Master (SPM), Office of S.P.M. Shastrinagar, Jodhpur, Rajasthan.

...Respondents

(By Advocate: Mr. B.L.Tiwari)

**ORDER**

In the present OA filed u/s 19 of the Administrative Tribunals Act, 1985 the applicant has prayed for

regularization of his services in the same manner as was done in the case of Vijesh Kumar, who has been given the benefit as per direction of this Tribunal. Other prayer of the applicant is for direction to the respondents to grant full time status to the applicant and to convert his status as permanent/temporary status of Class-D post with regular pay scale with consequential benefits.

2. The respondents have filed their reply denying the claim of the applicant and also raised preliminary objections with regard to delay and maintainability of the OA.
3. The applicant has filed a Misc. Application for condonation of delay stating that he has filed representation dated 10.4.2017 and prior to that also he has submitted representations, but the same has not been responded till date. His submission is that he has been working with the respondents on the post of part-time sweeper since 1984 till date. He was similarly situated employee as Shri Vijesh Kumar, who has been granted the benefit after intervention of this Tribunal and Hon'ble High Court way back in the year 2009. Therefore, there is some delay in preferring this application, but in the interest of justice, the same deserves to be condoned.

4. The respondents have filed reply to the Misc. Application for condonation of delay stating that the case of Shri Vijesh Kumar was decided a decade ago, but the applicant remained dormant for such a period, therefore, he cannot be permitted to claim similar relief. The respondents have further submitted that a specific period of limitation has been prescribed under Administrative Tribunals Act, 1985 for filing the matter. The Supreme Court in the case of S.S.Rathore reported in AIR 1990 SC 10 has very specifically held that Tribunal does not have power to condone the delay of more than six months over the period prescribed under Section 21 of the Administrative Tribunals Act.

5. Heard the learned counsel for the parties and perused the material on record. In my view, the delay in filing this OA is not sufficiently explained.

6. The applicant in this OA is seeking similar benefits as given to Shri Vijesh Kumar. Shri Vijesh Kumar has filed OA No.125/2005 which was allowed by this Tribunal vide order dated 15.2.2006 directing respondents to consider converting the status of the applicant from part-time casual labour to full time casual labour within a period of three

months from the date of receipt of a copy of the order. The respondents have challenged the order of the Tribunal before the Hon'ble High Court in DB CWP No.3104/2006 and the said Writ Petition was dismissed. Thereafter the respondent issued Memo dated 9.1.2007 rejecting the claim of Shri Vijesh Kumar. Shri Vijesh Kumar again filed OA No.93/2008, which was again allowed vide order dated 18.9.2009 against which the respondents filed DB CWP No.11217/2009 before the Hon'ble High Court which was again dismissed vide order dated 17.12.2009. In view of above, the respondents have implemented the order of this Tribunal regarding regularization of the services of Shri Vijesh Kumar.

7. The applicant in the present OA did not bother to raise his claim of regularization for all these years and filed representation only on 10.4.2017, but the same was not decided and therefore, the applicant has filed this OA claiming benefit of regularization at par with Shri Vijesh Kumar. On perusal of the representation dated 10.4.2017, it reveals that this pertains to increase of allowances from 1.1.2006 and not for regularisation. Shri Vijesh Kumar has raised his grievance in the year 2005 and vide order dated 15.2.2006, this Tribunal has passed direction to the

respondents to convert the status of the applicant from part time casual labour to full time casual labour. Thereafter DB Civil Writ Petition was filed and vide order dated 12.10.2006, the said Writ Petition was dismissed. The applicant has been working since 1984 as part-time contingent paid casual labour, but he is claiming only regularisation in the year 2019 at par with Shri Vijesh Kumar. It is clear that the applicant accepted his status during these years and did not raise his grievance for regularisation. Even after decision of this Tribunal in the case of Vijesh Kumar in the year 2006 and 2009 he did not raise his grievance. Though, he stated that he made representation dated 10.4.2017, but the same is regarding increase of allowances in which he has claimed increased allowances at par with Shri Sohan Singh, a part-time Gardener and it is not for regularisation of his services. For regularisation of his services, he is first time approaching this Tribunal in the year 2019 claiming regularisation of his services at par with Shri Vijesh Kumar.

8. During course of arguments, the learned counsel for the applicant referred to the judgment in the case of Mararaj Krishan Bhatt and Anr. Vs. State of Jammu and Kashmir and Ors., (2008) 9 SCC; the judgment in SB Civil

Writ Petition No.3649/2019 – Raj Kumar and Ors. vs. State of Rajasthan decided on 27.3.2019 by the Hon’ble Rajasthan High Court and the judgment in State of Punjab vs. Jagjit Singh, reported in (2017) 1 SCC 148. After going through these judgments, I found that these are not applicable to the facts and circumstances of this case as these are regarding equal pay for equal work and regarding extension of benefit to similarly situated persons, but does not deal with the issue of delay in claiming similar benefits.

9. The issue of claiming similar benefits and the delay and laches has been considered time and again by the Hon’ble Apex Court and same is not res-integra. In the case of **State Of U.P.& Ors vs Arvind Kumar Srivastava & Ors.** reported in (2015) a SCC 347, the Hon’ble Apex Court has extensively considered different judgments on the issue and held as under:-

“19. Some other judgments on the same principle of laches and delays are taken note of in paras 9 to 11 which are as follows:

“9. Similarly in Jagdish Lal v. State of Haryana, (1997) 6 SCC 538, this Court reaffirmed the rule if a person chose to sit over the matter and then woke up after the decision of the court, then such person cannot stand to benefit. In that case it was observed as follows: (SCC p. 542)

“The delay disentitles a party to discretionary relief under Article 226 or Article 32 of the Constitution. The appellants kept sleeping over their rights for long and woke up when they had the impetus from Union of India v. Virpal Singh Chauhan, (195) 6

SCC 684. The appellants' desperate attempt to redo the seniority is not amenable to judicial review at this belated stage."

10. [In Union of India v. C.K. Dharagupta](#), (1997) 3 SCC 395, it was observed as follows:

"9. We, however, clarify that in view of our finding that the judgment of the Tribunal in R.P. Joshi v. Union of India, OA No. 497 of 1986 decided on 17-3-1987, gives relief only to Joshi, the benefit of the said judgment of the Tribunal cannot be extended to any other person. The respondent C.K. Dharagupta (since retired) is seeking benefit of Joshi case. In view of our finding that the benefit of the judgment of the Tribunal dated 17-3- 1987 could only be given to Joshi and nobody else, even Dharagupta is not entitled to any relief."

11. [In Govt. of W.B. v. Tarun K. Roy](#), (1997) 3 SCC 395, their Lordships considered delay as serious factor and have not granted relief. Therein it was observed as follows: (SCC pp. 359-60, para 34)

"34. The respondents furthermore are not even entitled to any relief on the ground of gross delay and laches on their part in filing the writ petition. The first two writ petitions were filed in the year 1976 wherein the respondents herein approached the High Court in 1992. In between 1976 and 1992 not only two writ petitions had been decided, but one way or the other, even the matter had been considered by this Court in [State of W.B. v. Debdas Kumar](#), 1991 Supp (1) SCC 138. The plea of delay, which Mr. Krishnamani states, should be a ground for denying the relief to the other persons similarly situated would operate against the respondents. Furthermore, the other employees not being before this Court although they are ventilating their grievances before appropriate courts of law, no order should be passed which would prejudice their cause. In such a situation, we are not prepared to make any observation only for the purpose of grant of some relief to the respondents to which they are not legally entitled to so as to deprive others therefrom who may be found to be entitled thereto by a court of law."

20. The Court also quoted following passage from the Halsbury's Laws of England (para 911, p.395):

12....."In determining whether there has been such delay as to amount to laches, the chief points to be considered are:

- (i) acquiescence on the claimant's part; and
- (ii) any change of position that has occurred on the defendant's part.

Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches."

21. Holding that the respondents had also acquiesced in accepting the retirements, the appeal of U.P. Jal Nigam was allowed with the following reasons:

"13. In view of the statement of law as summarised above, the respondents are guilty since the respondents have acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or whiled it away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussions on the financial management of the Nigam. Why should the court come to the rescue of such persons when they themselves are guilty of waiver and acquiescence?"

22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

22.1 Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of [Article 14](#) of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2 However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3 However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see [K.C. Sharma & Ors. v. Union of India](#) (supra)). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.

23. Viewed from this angle, in the present case, we find that the selection process took place in the year 1986. Appointment orders were issued in the year 1987, but were also cancelled vide orders dated June 22, 1987. The respondents before us did not challenge these cancellation orders till the year 1996, i.e. for a period of 9 years. It means that they had accepted the cancellation of their appointments. They woke up in the year

1996 only after finding that some other persons whose appointment orders were also cancelled got the relief. By that time, nine years had passed. The earlier judgment had granted the relief to the parties before the Court. It would also be pertinent to highlight that these respondents have not joined the service nor working like the employees who succeeded in earlier case before the Tribunal. As of today, 27 years have passed after the issuance of cancellation orders. Therefore, not only there was unexplained delay and laches in filing the claim petition after period of 9 years, it would be totally unjust to direct the appointment to give them the appointment as of today, i.e. after a period of 27 years when most of these respondents would be almost 50 years of age or above.

24. For all the foregoing reasons, we allow the appeal and set aside the order of the High Court as well as that of the Tribunal. There shall, however, be no order as to costs."

10. Viewing the matter in the light of the above law propounded by the Hon'ble Apex Court, I find that the applicant has accepted his position for a long time and did not raise his claim for regularisation at the relevant time. Even after decision in the case of Vijesh Kumar in the year 2006 and thereafter in the year 2009 also he did not claim regularisation. In his representation dated 10.4.2017, he only claimed allowances from 1.1.2006 at a higher rate. The applicant suddenly woke up in the year 2019 to claim similar benefit given to Shri Vijesh Kumar. In these circumstances, as per the ratio in the case of Arvind Kumar Srivastava (supra) if the applicant did not challenge the action of the respondents and acquiesced into the same and woke up after a long delay only because of the reason that Shri Vijesh Kumar who has approached the Court earlier

and succeeded in his effort, then the applicant cannot claim that the benefit of the judgment rendered in the case of Vijesh Kumar being similarly situated person be extended to him. The applicant would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss his claim.

10. In view of above observations, the OA as well as MA is dismissed with no order as to costs.

**(HINA P.SHAH)  
JUDL. MEMBER**

R/